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C O N F I D E N T I A L SECTION 01 OF 02 ASTANA 000109

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STATE FOR SCA/CEN, DRL, EUR/RPM

E.O. 12958: DECL: 01/28/2020

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SUBJECT: KAZAKHSTAN: ZHOVTIS CASE TO SUPREME COURT

REFTEL: 09 ASTANA 2141

Classified By: Charge d' Affaires Pamela Spratlen: 1.4 (b), (d)

¶1. (C) SUMMARY: Vitaliy Voronov, lawyer for imprisoned human-rights activist Yevgeniy Zhovtis filed on January 27 a motion to request the Supreme Court review the case. The court has one month to decide whether to accept the case and an additional month to issue a decision. Cautiously optimistic that the Supreme Court will rule in Zhovtis' favor, Voronov stressed that it will be a "political decision." He believes the Kazakhstani government should be made to understand that this is the easiest way to resolve the case. He noted, however, Kazakhstan's hyper-awareness of its newly-gained international stature as OSCE Chair, and strongly cautioned against placing conditions on Kazakhstan or demanding Zhovtis immediate release. In his opinion, President Nazarbayev is relatively uninformed about this case and the international reaction to it, because his inner circle does not want to upset him. END SUMMARY.

CASE FILED WITH THE SUPREME COURT

¶2. (C) Vitaliy Voronov, lawyer for human-rights activist Yevgeniy Zhovtis, told the CDA that he filed a motion to request the Supreme Court review Zhovtis' case on January 27 (reftel). (NOTE: Amendments to the Criminal Procedure Code that went into effect on January 1 allow the Supreme Court to review cases of crimes of lesser gravity, like the one for which Zhovtis was convicted. END NOTE.) The Supreme Court has one month to decide whether to accept the case for review. If it does, it must issue a decision within another month. Voronov said the Supreme Court usually acts quickly.

CAUTIOUS OPTIMISM

¶3. (C) In his appeal, Voronov requested the court simply vacate Zhovtis' sentence and did not ask it to overturn the guilty verdict, as in earlier appeals. Despite Voronov's cautious optimism that the Supreme Court will decide in Zhovtis' favor, he stressed that this will be "a political, and not judicial, decision." The initial stages of the Zhovtis case were controlled by "law enforcement and security forces, people on the lower levels, who misunderstood and miscalculated the political reverberations," he argued. "Now politicians are involved, and the Supreme Court will do what it is told."

¶4. (C) Voronov believes that these "lower elements achieved their goals -- they struck fear into the community. A regular person on the street now thinks 'If they can do this to Zhovtis, with his

international standing, they can do anything to me'. It has worked -- the opposition, NGOs, and regular people are scared," he stressed.

In response to the CDA's inquiry about the reasons behind Voronov's optimism about the Supreme Court, given his belief that the whole case has been politically motivated, Voronov explained, "We have no choice, this is the only path left." Zhovtis' defense team continues to consider filing a petition with the UN Human Rights Council (UNHRC), he noted, but UNHRC cases require much preparation, and their outcomes are protracted. "My goal is to get Zhenya (Zhovtis) out quickly."

#### WARNING AGAINST CONDITIONS

15. (C) A decision by the Supreme Court to vacate Zhovtis' sentence would "be an easy and beautiful solution for Kazakhstan," asserted Voronov. "A message needs to get to the top that this is the best solution for them." However, he strongly cautioned against "ordering (President) Nazarbayev to release Zhovtis or putting conditions on Kazakhstan. You are dealing with the Chairman of the OSCE now, the government is not afraid of anything," he argued. Pushing Kazakhstan too much could be perceived as interference in internal affairs and may backfire -- "Zhovtis would be forced to serve the whole sentence just to prove that Kazakhstan is sovereign and independent. Someone needs to suggest to Nazarbayev, gently and privately, that [the Supreme Court] option is the best way out, perhaps through [Foreign Minister] Saudabayev or [National Security Advisor] Tazhin," opined Voronov.

"DO NOT UPSET THE OLD MAN"

16. (C) In Voronov's opinion, President Nazarbayev knows little of the Zhovtis case and the international reaction to it. "He probably only

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knows what was in the MFA's press release -- there was an accident. Zhovtis was at fault. He received a fair sentence. Justice was served." Voronov believes that people closest to Nazarbayev "do not want to upset him. I've heard some say, 'Why worry the old man?'" Voronov alleged that Presidential Advisor Yertysbayev has been trying to see Nazarbayev since July "to tell him how this looks" from the international perspective. (NOTE: Yertysbayev participated in OSCE's 2009 Human Dimension Implementation Meeting in Warsaw, where the Zhovtis case and his less-than-diplomatic behavior received significant attention. END NOTE.) "He cannot get in, [Chief of Presidential Administration] Musin keeps him out," asserted Voronov.

17. (C) COMMENT: The Supreme Court review presents Kazakhstan an easy, face-saving way out -- Zhovtis is freed but remains guilty of the crime. However, as recently as today, the MFA reiterated that Zhovtis' treatment has been in strict accordance with Kazakhstani law and that Kazakhstanis consider it unfair that the international community is singling him out. Since assuming the OSCE Chairmanship, the government has grown increasingly sensitive about criticism of its domestic human-rights record and alleged slights to its international stature. Should the Supreme Court vacate the verdict as Voronov hopes, the government would be able to achieve its political objectives, but save face by saying that it was possible because of the actions of its independent judiciary without any international interference. For this reason, we should seriously consider Voronov's warning. END COMMENT.

SPRATLEN